

**OPINION
51-211**

July 27, 1951 (OPINION)

WORKMEN'S COMPENSATION

RE: 1951 Amendment

This is in reply to a request for an opinion on the interpretation of section 65-0509, as amended by the legislative session of 1951, which is as follows:

"65-0509. Total Disability; Weekly and Aggregate Compensation. If the injury causes temporary or permanent total disability, the fund shall pay to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of his weekly wage, subject to the maximum and minimum limitations contained in section 65-0511. In case of temporary or permanent total disability, there shall be paid to such disabled employee an additional sum of five dollars per week for a dependent spouse plus two dollars per week for each dependent child under the age of eighteen years, and for each child over eighteen years, and incapable of self-support due to physical or mental disability and whose maintenance is the responsibility of the claimant. Dependency awards for the spouse and children may be made direct to the spouse at the discretion of the bureau. In no event shall the total weekly payment to the totally disabled employee exceed the sum of forty-two dollars per week, AND IN NO CASE SHALL THE COMPENSATION AWARD EXCEED THE ACTUAL WAGE OF THE DISABLED EMPLOYEE EXCEPT IN THOSE CASES ON WHICH THE MINIMUM COMPENSATION AWARD IS APPLIED."

It is well known, beyond any doubt, that the weekly wage earnings in the 1930's and early 1940's do not, in dollars and cents, compare to the weekly wage that is earned now, irrespective of the purchasing value. Also, to avoid any misunderstanding, a previous opinion ruled that the special benefits allowed in this amendment applied to all permanent disability claims whether they were incurred prior or subsequent to July 1, 1951.

The main issue rests in the underscored language of the amended act. There is no doubt that the legislature distinguished between compensation based on two-thirds of the weekly wage and the dependency benefits. This is clearly shown by the phraseology "an additional sum." Also, the limitation set forth in section 65-0511 applies only to the compensation based on the weekly wage earnings and not to the special dependency benefits. This predicate is further substantiated by the continual increase of the special and dependency benefits by previous legislative sessions; however, in all the enactments, pursuant to awards allowed to permanent disabled employees, there has always been a maximum. In the 1951 session the legislature set the maximum at \$42 per week.

It is therefore the opinion of this office that in cases of temporary

or permanent total disability that the claimant and/or his dependents receive two-thirds of his weekly wage at the time of his injury or recurrence and in addition thereto the special dependency benefits allowed, up to but not exceeding \$42 per week; however, the two-thirds of his weekly wage shall remain within the maximum and minimum set forth in section 65-0511.

The phrase "in no case shall the compensation award exceed the actual wage of the disabled employee except in those cases on which the minimum compensation award is applied" applies to the compensation based on weekly wage earnings and does not apply to the dependency benefits. In other words, the compensation based on weekly wage earnings plus the dependency benefits can exceed the weekly wage earnings at the time of the injury.

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